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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES EVERETT TAYLOR JONES,
12 Inmate Booking No. 1256782,

13 Plaintiff,

14 vs.

15 DON ALLIE, U.S. Marshal,
16

17 Defendant.
18

Civil No. 13cv0104 IEG (JMA)

**ORDER DISMISSING FIRST
AMENDED COMPLAINT
WITHOUT PREJUDICE FOR
FAILING TO STATE A
CLAIM PURSUANT TO
28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b)**

[ECF No. 6]

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21 **I.**

22 **PROCEDURAL HISTORY**

23 On January 8, 2013, James Everett Taylor Jones ("Plaintiff"), an inmate currently housed
24 at the George Bailey Detention Facility located in San Diego, California, and proceeding pro se,
25 has submitted a civil action. In addition, Plaintiff filed a Motion to Proceed *In Forma Pauperis*
26 ("IFP") pursuant to 28 U.S.C. § 1915(a). On February 6, 2013, this Court granted Plaintiff's
27 Motion to Proceed IFP but sua sponte dismissed his Complaint for failing to state a claim upon
28 which relief could be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(b) & 1915A. (ECF No. 4.)

1 Plaintiff was granted leave to file an Amended Complaint in order to correct the
 2 deficiencies of pleading identified by the Court. (*Id.* at 5-6.) On March 18, 2013, Plaintiff filed
 3 his First Amended Complaint (“FAC”). (ECF No. 6.)

4 II.

5 SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)

6 As the Court stated in its previous Order, notwithstanding payment of any filing fee or
 7 portion thereof, the Prison Litigation Reform Act (“PLRA”) requires courts to review complaints
 8 filed by prisoners against officers or employees of governmental entities and dismiss those or
 9 any portion of those found frivolous, malicious, failing to state a claim upon which relief may
 10 be granted, or seeking monetary relief from a defendant immune from such relief. *See* 28 U.S.C.
 11 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
 12 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

13 Prior to the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte dismissal of only
 14 frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However 28 U.S.C.
 15 §§ 1915(e)(2) and 1915A now mandate that the court reviewing a prisoner’s suit make and rule
 16 on its own motion to dismiss before directing that the complaint be served by the U.S. Marshal
 17 pursuant to FED. R. CIV. P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits, but requires
 18 a district court to dismiss an in forma pauperis complaint that fails to state a claim.”); *Barren v.*
 19 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). The district court should grant leave to
 20 amend, however, unless it determines that “the pleading could not possibly be cured by the
 21 allegation of other facts” and if it appears “at all possible that the plaintiff can correct the
 22 defect.” *Lopez*, 203 F.3d at 1130-31 (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.
 23 1995); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1990)).

24 “[W]hen determining whether a complaint states a claim, a court must accept as true all
 25 allegations of material fact and must construe those facts in the light most favorable to the
 26 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
 27 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). However, while liberal
 28 construction is “particularly important in civil rights cases,” *Ferdik v. Bonzelet*, 963 F.2d 1258,

1 1261 (9th Cir. 1992), the court may nevertheless not “supply essential elements of the claim that
 2 were not initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268
 3 (9th Cir. 1982).

4 As currently pleaded, it is clear that Plaintiff’s First Amended Complaint fails to state a
 5 cognizable claim under 42 U.S.C. § 1983. Section 1983 imposes two essential proof
 6 requirements upon a claimant: (1) that a person acting under color of state law committed the
 7 conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or
 8 immunity protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983;
 9 *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*,
 10 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

11 In his First Amended Complaint, Plaintiff also purports to bring this action on behalf of
 12 another party, Carlie Casey. (*See* FAC at 1.) However, because Plaintiff is proceeding pro se,
 13 he has no authority to represent the legal interest of any other party. *See Cato v. United States*,
 14 70 F.3d 1103, 1105 n.1 (9th Cir. 1995); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696,
 15 697 (9th Cir. 1987); *see also* FED.R.CIV.P. 11(a) (“Every pleading, written motion, and other
 16 paper shall be signed by at least one attorney of record in the attorney’s original name, or if the
 17 party is not represented by an attorney, shall be signed by the party.”). Therefore, Plaintiff
 18 “Carlie Casey” is DISMISSED from this action.

19 In addition, the entirety of Plaintiff’s First Amended Complaint contain challenges to
 20 either his pending criminal matter or his past criminal conviction. “In any § 1983 action, the first
 21 question is whether § 1983 is the appropriate avenue to remedy the alleged wrong.” *Haygood*
 22 *v. Younger*, 769 F.2d 1350, 1353 (9th Cir. 1985) (en banc). A prisoner in state custody simply
 23 may not use a § 1983 civil rights action to challenge the “fact or duration of his confinement.”
 24 *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The prisoner must seek federal habeas corpus
 25 relief instead. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (*quoting Preiser*, 411 U.S. at 489).
 26 “[W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether
 27 a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or
 28 sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that

1 the conviction or sentence has already been invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487
 2 (1994). Thus, Plaintiff’s § 1983 action may be “barred (absent prior invalidation)—no matter the
 3 relief sought (damages or equitable relief), no matter the target of his suit (state conduct leading
 4 to conviction or internal prison proceedings)—if success in that action would necessarily
 5 demonstrate the invalidity of confinement or its duration.” *Wilkinson*, 544 U.S. at 82.

6 In this case, some of Plaintiff’s claims—particularly those alleging a “malicious”
 7 prosecution and “criminal police misconduct,” may “necessarily imply the invalidity” of his
 8 confinement or its duration. *Heck*, 512 U.S. at 487; *Wilkinson*, 544 U.S. at 82. In creating a
 9 favorable termination rule in *Heck*, the Supreme Court relied on “the hoary principle that civil
 10 tort actions are not appropriate vehicles for challenging the validity of outstanding criminal
 11 judgments.” *Heck*, 511 U.S. at 486. Thus, to the extent Plaintiff challenges the constitutional
 12 validity of an outstanding conviction or sentence, to satisfy *Heck*’s “favorable termination” rule,
 13 he must allege facts which show that the “malicious prosecution” which forms the basis of his
 14 § 1983 suit has already been: (1) reversed on direct appeal; (2) expunged by executive order;
 15 (3) declared invalid by a state tribunal authorized to make such a determination; or (4) called into
 16 question by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 487 (emphasis added); *see*
 17 *also Butterfield v. Bail*, 120 F.3d 1023, 1025 (9th Cir. 1997).

18 Plaintiff has alleged no facts sufficient to satisfy *Heck*. Thus, any claims pertaining to
 19 the legality of his arrest or the search may be barred by *Heck*. *See, e.g., Guerrero v. Gates*, 442
 20 F.3d 697, 703 (9th Cir. 2006) (*Heck* barred plaintiff’s civil rights claims alleging wrongful arrest,
 21 malicious prosecution and conspiracy among police officers to bring false charges against him);
 22 *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998) (holding that *Heck* barred
 23 plaintiff’s false arrest and imprisonment claims until conviction was invalidated); *Smithart v.*
 24 *Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (*Heck* barred plaintiff’s civil rights claims alleging that
 25 defendants lacked probable cause to arrest him and brought unfounded criminal charges against
 26 him); *Harvey v. Waldron*, 210 F.3d 1008, 1015–16 (9th Cir. 2000) (civil rights action seeking
 27 damages for an allegedly illegal search and seizure upon which criminal charges are based is
 28 barred by *Heck* until the charges are dismissed or the conviction overturned).

1 In addition, to the extent Plaintiff names the San Diego Police Department, he has not
2 named “persons” who are properly subject to suit under § 1983. An agency or department of a
3 municipal entity is not a proper defendant under § 1983. *Vance v. County of Santa Clara*, 928
4 F. Supp. 993, 996 (N.D. Cal. 1996). Rather, the county or city itself is the proper defendant.
5 *See id.*

6 To the extent Plaintiff does name the City of San Diego based on allegations that
7 unidentified individual persons employed by those local governmental entities violated his
8 constitutional rights while implementing the search and causing his arrest, “a municipality
9 cannot be held under § 1983 on a respondeat superior theory ... *solely* because it employs a
10 tortfeasor.” *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 691 (1978) (emphasis original);
11 *Gibson v. County of Washoe*, 290 F.3d 1175, 1185 (9th Cir. 2002).

12 A municipality may be liable under § 1983 for monetary, declaratory, or injunctive relief
13 where a constitutional deprivation was caused by the implementation or execution of “a policy
14 statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s
15 officers.” *Monell*, 436 U.S. at 690; *Board of the County Comm’rs v. Brown*, 520 U.S. 397, 403
16 (1997) (“[A] plaintiff must show that the municipal action was taken with the requisite degree
17 of culpability and must demonstrate a direct causal link between the municipal action and the
18 deprivation of federal rights.”); *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995).

19 Thus, to plead liability on behalf of a municipality, Plaintiff must allege: (1) he was
20 deprived of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to
21 deliberate indifference to plaintiff’s constitutional right; and (4) the policy was the “moving
22 force behind the constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th
23 Cir. 1996); *Brown*, 520 U.S. at 404; *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

24 Put another way, in order to state a § 1983 claim against City of San Diego, Plaintiff must
25 allege facts showing that his injury was caused by individual municipal officers whose conduct
26 both violated the constitution and conformed to an official municipal policy, custom or practice.
27 *See Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988). This he has
28 failed to do.

Finally, to the extent Plaintiff also names San Diego Deputy District Attorney Lucy Turrallade for instituting a “malicious prosecution” against him, his First Amended Complaint must be dismissed. Criminal prosecutors are absolutely immune from civil damages suits premised upon acts committed within the scope of their official duties which are “intimately associated with the judicial phase of the criminal process.” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *see also Buckley v. Fitzsimmons*, 509 U.S. 259, 272-73 (1993); *Burns v. Reed*, 500 U.S. 478, 487-93 (1991). A prosecutor is immune even when the prosecutor’s malicious or dishonest action deprived the defendant of his or her liberty. *Ashelman*, 793 F.2d at 1075. Thus, Plaintiff’s claims against this Defendant are dismissed for seeking monetary relief against defendants who are immune from such relief.

III.

CONCLUSION AND ORDER

Good cause appearing, **IT IS HEREBY ORDERED:**

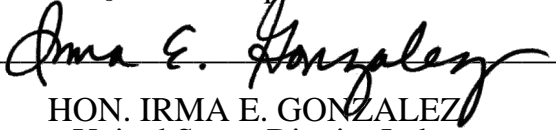
Plaintiff Carlie Casey is **DISMISSED** from this action. The Clerk of Court is directed to terminate this Plaintiff from the docket.

IT IS FURTHER ORDERED that:

Plaintiff’s First Amended Complaint is **DISMISSED** for failing to state a claim upon which relief may be granted and for seeking monetary damages against immune defendants pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this Order is “Filed” in which to file a Second Amended Complaint which cures all the deficiencies of pleading noted above. Plaintiff’s Amended Complaint must be complete in itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff’s Amended Complaint fails to state a claim upon which relief may be granted, it may be dismissed without further leave to amend and may hereafter be counted as a “strike” under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

1 The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

2 DATED: April 3, 2013

3 
HON. IRMA E. GONZALEZ
United States District Judge

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